



October 19, 2000

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2000-4059

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140358.

The City of Victoria (the "city") received a request for a copy of a specified recorded 9-1-1 call, as well as recordings of subsequent radio contact between EMS and their base and Detar Hospital. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. When information is demonstrated to comprise an EMS record, access to the information is governed by the Emergency Medical Services Act, chapter 773 of the Health and Safety Code. Section 773.091 of the Health and Safety Code provides, in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by

an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

The submitted tape consists of the initial communication between a caller and a 9-1-1 operator, as well as radio dispatch information. You do not inform us, and it is not apparent to this office, that the 9-1-1 operator is certified emergency medical services personnel. Therefore, the initial 9-1-1 call is not protected from required public disclosure by section 773.091.

The subsequent radio dispatch information consists of routing information only. It is not a communication with a patient protected under section 773.091(a), and it is not a record "of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision," made confidential under section 773.091(b). Therefore, the city must release all of the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 140358

Encl. Submitted audiotape

cc: Mr. Bryan McKee
7554 Red Pine Road
Harrisburg, Pennsylvania 17112
(w/o enclosures)